Proskauer

Sanctions Considerations for Private Equity Firms – a few practical tips

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1. **Background**

Private equity firms could face significant sanctions risks when doing business with entities connected to sanctioned jurisdictions (such as Russia). These risks may arise in a number of ways (either directly or via indirect connections to sanctioned entities / individuals), including:

- if investors in fund vehicles are subject to sanctions;
- if potential acquisition targets are subject to sanctions; and
- if portfolio companies are providing goods / services in sanctioned jurisdictions or to sanctioned customers.

With this in mind, we have highlighted some of the key considerations for private equity firms when carrying out activities that may give rise to sanctions risks.

2. **Key Sanctions Considerations**

European Union

The European Union ("**EU**") sanctions regime applies to EU persons (wherever located) or to persons in the EU. As part of its sanctions efforts, the EU imposes restrictive measures on designated individuals / entities, including asset freezes and travel bans, as well as sectoral sanctions affecting industries such as finance, energy and defence.

For example, Regulation (EU) No 833/2014 sets out the EU's sanctions regime in relation to Russia (the "**Russia Sanctions Regulation**"). The Russia Sanctions Regulation not only designates specific sanctioned individuals / entities, therefore subjecting them to a higher level of restrictions (such as asset freezes), but it also sets out a broader range of activities that are restricted. This varies from more obvious categories, such as the provision of arms, to the less obvious, such as the provision of certain software products. The Russia Sanctions Regulation also includes prohibitions on certain activities that could be used to circumvent the sanctions regime, such as routing business activity through another jurisdiction with the aim to provide restricted goods / services to an end-user in Russia.

Certain exemptions are available, for example, in relation to activities carried out for humanitarian purposes. In addition, the Russia Sanctions Regulation sets out various grounds to apply for licences to the applicable EU Member State regulator, which (if granted) would allow for the restricted activity to then be carried out. Licenses are, in effect, written authorisations by the competent authority of the relevant EU Member State permitting acts that are otherwise prohibited by sanctions.

United Kingdom

Following Brexit, the United Kingdom ("**UK**") maintains its own sanctions regime, which is closely aligned with the EU but independently administered. The UK sanctions regime applies to any UK person (wherever located) and all persons in the UK.

The Sanctions and Anti-Money Laundering Act 2018 (the "**UK Sanctions Act**") sets out the UK Government's powers to impose sanctions and various statutory instruments are issued as required – for example, the Russia (Sanctions) (EU Exit) Regulations 2019 in relation to Russia. The UK Sanctions Act provides the main legal basis for the UK to impose, update and lift sanctions.

In the same way as the EU, the UK designates specific individuals / entities, restricts certain activities in relation to sanctioned jurisdictions and includes provisions on circumvention. The UK also has similar exemptions available, as well as its own licensing regime, where applications are made to the Office of Financial Sanctions Implementation.

3. **Practical Tips**

- **Due diligence:** Fund sponsors should conduct robust due diligence on investors and potential acquisition targets. Portfolio companies should carry out sufficientKYC checks on recipients of their goods / services. Further screening should be carried out if any higher-risk sectors are involved, such as the defence or energy sectors.
- **Policies / Procedures:** Implementing a robust compliance program is essential, including regularly updating sanctions screening tools, policies and procedures to reflect the latest regulatory changes. Staff should also receive regular training on sanctions.
- **Monitoring and Auditing:** Regular monitoring and audits should be carried out to ensure ongoing compliance with sanctions.
- **Exemptions / Licensing:** If any activity is restricted under a sanctions regime, consideration should be given to whether any exemptions apply or whether there are grounds to apply for a licence to allow the activity to be carried out.
- **Contractual Protections:** Any agreements entered into should contain sufficient protection – including compliance with sanctions laws provisions and the ability to terminate if sanctions laws are breached.
- **Contingency Planning:** Firms should develop contingency plans to address potential sanctions-related disruptions, including divestment strategies and alternative business arrangements.

4. **Conclusion**

Sanctions regimes around the world are continuing to evolve at a fast pace. All businesses, including private equity firms, need to continue to be aware of the potential associated risks and appropriate legal advice should be sought to ensure ongoing compliance. This approach not only helps in avoiding legal and financial penalties, but also protects firms from reputational risks as well.

For any UK or EU sanctions related queries, please reach out to the Proskauer UK Regulatory team.

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